

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.13267 of 2006

DATED: 01.11.2007

Between:

S. Padmavathi

....Petitioner

AND

1. The Joint Collector, Vizianagaram,
Vizianagaram District and others

....Respondents

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WRIT PETITION No.13267 of 2006

ORDER:

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Heard Sri Taddi Nageswara Rao, the learned counsel representing the writ petitioner and the learned Assistant Government Pleader for Civil Supplies.

2. This Court issued rule nisi on 30.06.2006 and granted interim direction in W.P.M.P.No.16493 of 2006.

3. This writ petition is filed for issuance of writ order or direction, more particularly, one in the nature of Writ of Mandamus declaring the order of the first respondent dated 11.03.2006 bearing F.P.SAP No.8/2005 G8 confirming the orders of the second respondent dated 02.05.2005 bearing Rc.No.2689/04 H, as wholly illegal, arbitrary and against the principles of natural justice and consequently to set aside the same and to pass such other suitable orders.

4. The operative portion of the impugned order reads as hereunder:-

“In G.O.Ms.No.53, C.A., Food & Civil Supplies (C.S.I) Dept., dt, 08.10.2003 the Government have clearly ordered that the appointed dealer should personally run the F.P.Shop and not run it benami or through an agent. However, women dealers may take the assistance of their family members whose

names are included in the dealers supply card.

In her explanation to the show cause notice issued by the R.D.O., Vizianagaram, the appellant has stated that she is widow and taking the assistance of another person for looking after the bank works and for getting the essential commodities from godown. She herself admitted before the Joint Collector's Court also that she is taking the assistance of one Sri T. Kameswararao for running the F.P.Shop. The records clearly speaks that she has violated the Government instructions issued in G.O.Ms.No.53 C.A., Food & Civil Supplies (C.S.I) Dept., dt.08.10.2003.

The Revenue Divisional Officer, Vizianagaram has rightly cancelled the authorization. There are no merits on the appeal, in the above circumstances, I conform the orders of the Revenue Divisional Officer, Vizianagaram passed in proceedings Rc.No.2689/04 H.dt.02.05.2005."

5. Sri T. Nageswara Rao, the learned counsel representing the petitioner placed strong reliance on the decision of this Court in **M.A. GHANI v. DISTRICT COLLECTOR, MAHABUBNAGAR DISTRICT**^[1]. The learned counsel also would submit that mere taking assistance of one Kameswara Rao would not amount to contravention of any of the Control Orders governing the field. Hence, the order cannot be sustained. The learned counsel also would maintain that in the light of the explanation submitted by the writ petitioner, the reasons which had been recorded by the second respondent cannot be sustained and the way, in which, the first respondent had dealt with the matter also being not in accordance with law, the same is liable to be set aside.

6. The learned Assistant Government Pleader for Civil Supplies would submit that at the best the assistance of the family members can be taken as per the Control Orders and Kameswara Rao being unconcerned with the family in the light of the admission made by the petitioner, the order made by the second respondent and also the order made by the first respondent cannot be found fault with. The learned Assistant Government Pleader for Civil Supplies had drawn the attention of this Court to the relevant provisions of the Control Orders, and in particular, G.O.Ms.No.53 dated 08.10.2003.

7. No counter-affidavit had been filed and it is stated that in the light of the facts and circumstances, no counter-affidavit need be filed.

8. It is stated by the petitioner in the affidavit filed in support of the writ petition that she had been appointed as a Fair Price Shop dealer of Shop No.18, Vizianagaram Town about 10 years back. Since the date of her appointment, she has been distributing the essential commodities to the cardholders without any inconvenience or complaint from them and also to the utmost satisfaction of the authorities.

9. It is further stated by the petitioner that while the matter stood thus, the third respondent herein submitted a report on 02.11.2004 to the second respondent stating that her Fair Price Shop is being run by a benami person. The second respondent simply relying upon the report of the third respondent without conducting any sort of enquiry into the matter and without furnishing the copy of the report said to have been submitted by the third respondent, issued a show cause notice dated 02.12.2004 without following the principles of natural justice. It is further stated that the petitioner submitted her explanation in detail stating that she had never entrusted or handed over the Fair

Price Shop to any person and the said shop is being run by her only.

10. It is further stated by the petitioner that the second respondent without perusing the explanation submitted by her in proper perspective, came to a wrong conclusion and passed the impugned order canceling her authorization *vide* Proceedings Rc.No.2689/04 H dt.2.5.2005. Aggrieved by the orders of the second respondent, the petitioner preferred an appeal before the first respondent and initially, the first respondent granted interim stay on 07.05.2005. Thereafter, the first respondent was pleased to dismiss the said appeal by proceedings dt.11.03.2006 bearing F.P.SAP No.8/2005 G8, confirming the orders of the second respondent upon an erroneous view of law and facts. It is also stated that the findings of the respondent-authorities that the petitioner violated the conditions of the Form-II authorization and para 12 (xiii) of the G.O.Ms.No.53 Consumer Affairs, Food and Civil Supplies (CS.I) Department dt.06.10.2003 are false. The said allegation is far from truth since the petitioner never handed over the Fair Price Shop to any person nor any benami person had run her shop at any point of time, but she had been taking the assistance of only her family members. It is further stated that from the perusal of the impugned order, dated 02.05.2005 of the second respondent, it is clear that as per the inspection report of the Civil Supplies Deputy Tahsildar on 22.11.2004, the petitioner was running the Fair Price Shop and she had given the requisite information to the said authority, but in the impugned order dated 02.05.2005, the second respondent stated that the petitioner could not answer the minimum information and the same is absolutely false.

11. Certain facts had been narrated in the affidavit filed in support of the writ petition. Certain submissions were also made in view of the alternative remedy available to the petitioner. In the light of the reasons

recorded by the first respondent, this Court is satisfied that the first respondent had not considered the relevant grounds raised by the petitioner in proper perspective. No doubt, it is recorded that the assistance of one Kameswara Rao had been taken for running the fair price shop. But the specific stand taken by the petitioner is that the assistance had been taken for a limited purpose and the petitioner alone had been running the fair price shop. Further specific stand had been taken that the report on the strength of which, the second respondent had made an order had not been furnished to the petitioner. Be that as it may, in the light of the facts and circumstances, since the petitioner is taking a specific stand that she has been running the Fair Price Shop and the ground of benami had been specifically denied and in view of the fact that this Court issued rule nisi on 30.06.2006 *and the* interim direction had been granted on the said date in W.P.M.P.NO.16493 of 2006 and also in the light of the decision in **M.A. Ghani's** case (1 supra), this Court is inclined to give one more opportunity to the petitioner and the orders made by both the first respondent and the second respondent are hereby quashed and the matter is remitted to the second respondent to conduct an enquiry in accordance with law, after furnishing the report to the petitioner and after taking further explanation, if any, which may be submitted by the writ petitioner and pass appropriate orders in this regard within a period of 4 weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition is allowed to the extent indicated above. No order as to costs.

P.S.NARAYANA, J.

DATED:1st November, 2007
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[\[1\]](#) 2005 (2) ALD (NOC 125)